

## Family Law Case Alert

In re Marriage of Ackerman (2006) California Appeals Court 4<sup>th</sup> Dist. Div. 3 filed December 27, 2006

We generally do not cover family court decisions, particularly one in a jurisdiction quite removed from our market area. This appeals court decision in California, however may prove important even on the East coast because it gives insights into the court thinking in dealing with reasonable compensation in determining the distributive value of a plastic surgeon's practice in an upscale area.

The wife's expert utilized the Medical Group Management Association's Physician Compensation & Production Survey and used the data for the Western states, the correct specialty and years in practice. [Median \$291,000; \$355,000 75% percentile.] The court was troubled by the large area covered by the survey, and would have preferred more localized data; after all, a plastic surgeon relies on discretionary income, of which there must be considerably more in Orange County, CA than in other areas of the West where incomes are lower.

The husband's expert used the American Medical Association's Physician Socioeconomic Statistics survey, calculating averages net income per dollar of revenues, which he proceeded to apply to the husband's practice. At the court's request, he conducted a limited survey of plastic surgeons in the area, concluding that the husband was earning close to a local average. His conclusion on reasonable compensation was \$515,000 or 90% of the limited survey's finding, which dovetailed with the AMA data. The court was troubled by the data's inability to distinguish between what a highly-compensated employee makes and what a self-employed surgeon would consider appropriate in a strong market. In fact, the Court indicated that any qualified surgeon would almost certainly not be interested in working for someone else under these facts and circumstances, and concluded that the husband's expert was closer to the mark. The appeals court verified that other factors were considered, such as location, patronage, personalities, length of time in business, customers' habit in patronizing.

The decision also goes over the wife's appeal objections in the area of method [excess earnings,] ancillary income and others, and broadly affirms the trier of facts's decision as sufficiently well articulated and fair. The decision is located at <http://www.courtinfo.ca.gov/opinions/documents/G034259.PDF> A copy is at <http://www.NYNJCT-BV.com/AckermanCAdivAppeal.pdf>

Do not hesitate to call or e-mail to discuss this or any other valuation issue.

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